

Complaint Victim

Person Filing Motion:

Name: PATRICK H. TORRENCE

Daytime Telephone No. 224-8200

Mailing Address: 3600 Bette Lato Avenue Seward AK 99664

APR 22 2020

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT Anchorage

APPELLATE COURTS
OF THE
STATE OF ALASKA

PATRICK H. TORRENCE

Applicant Plaintiff(s),

vs.

STATE OF ALASKA

Respondent. Defendant(s).

Court of Appeals A-13010

Case No. 3AN-08-3388CR

APR 27 2020

APPELLATE COURTS
OF THE
STATE OF ALASKA

SUMMARY DISPOSITION

CASE NO. 3AN-11-11446

CI

MOTION FOR THE AMENDMENT OF
the JUDGMENT OPINION

I, Patrick H. Torrence, request that: a hearing be held on the following

Subject matter: Sec. 39.52.120 Misuse of official position (4) take or with- hold official action in order to affect a matter in which the public officer has personal or financial interest; fees and outrageous deficient performance to cause this case to be affirmed. I used fabricated factual allegations. Defense attorney Elizabeth Friedman. Failure to present exculpatory evidence on remaining charges.

This request should be granted because (Include any statutes, court rules, court decisions and any facts that support granting the request):

Sec. 39.52.190 Aiding a violation prohibited: Using fabricated evidence to assist in the affirmation of Summary Disposition. States Attorney Ann B. Black. The states evidence is fabricated and the improper use of a Fifth Amendment violation stating conceding. This appeal was a sham that keeps me illegally incarcerated. Deliberate ineffective assistance, malpractice and aiding and abetting a malicious prosecution. Official misconduct AS 11.56.955 and AS 11.76.110 interference with constitutional rights Both class A misdemeanors. Prolonging improper incarceration. If this continues this case will never be overturned!

4/29/20 **REFUSED FOR FILING** [Attach extra pages if necessary.]

Under Appellate Rule 518(b),
your attorney must file documents
in your appeal on your
behalf. I remind you that you currently have an Appeal in A-13359 that is stayed pending the
outcome of your Petition in S-17760. Ryan Montgomery
By the
Chief Deputy Clerk

I certify that all statements in this motion and any attachments are true to the best of my
knowledge and belief.

4-22-20

Date

E. Friedman
A. Black

Patrick H. Torrence

Signature

Notice to Opposing Parties: You have the right to file a response to this motion. Forms and instructions (CIV-808 Packet) are available at courts and at courts.alaska.gov/forms/index.htm
File your response at (court address): 303 K St. Anchorage, AK 99501

You must also mail a copy to the person who filed the motion. Civil Rules 77(c)(2) and 6 set the deadline within which you must respond. For most motions, you must respond within 10 days if the motion was personally served on you or within 13 days (from the date of mailing) if the motion was mailed to you.

FILED

Person Filing Proposed Order:

Name: Patrick H. Torrence

Daytime Telephone No. 224-8200

APR 22 2020

Mailing Address: 3600 Bette Cato Avenue Seward AK 99664

APPELLATE COURTS
OF THE
STATE OF ALASKA

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA AT Anchorage

PATRICK H. TORRENCE,
Applicant, Plaintiff(s),

vs.

STATE OF ALASKA,
Respondent, Defendant(s).

Court of Appeals A-13010
Case No. 3ANU-08-3388CR

RECEIVED

APR 27 2020

APPELLATE COURTS
OF THE
STATE OF ALASKA

CASE NO. 3ANU-11-11446

ORDER ON MOTION FOR THE

AMENDMENT OF THE JUDGMENT
SUMMARY DISPOSITION

It is ordered that:

- ☐ The motion is granted.
- ☐ The motion is denied.
- ☐ A hearing on the motion will be held at _____ Courtroom _____
(Time and Date)

Further Orders:

1) That the Summary Disposition is assessed with fabricated
information. Which keeps the inmate improperly incarcerated at
tax payers expense. Outrageous please correct. This has gone
on for 12 years.

Date

Judge's Signature

Type or Print Judge's Name

I certify that on _____
a copy of this order was mailed to (list
names):

Clerk: _____

Case Number 3AN-11-11446 CI
A-13010

CERTIFICATE OF SERVICE

[If the opposing party is represented by an attorney, you must serve the motion on the attorney rather than on the opposing party.]

I certify that I mailed (by first class mail) or hand-delivered a copy of this motion to:

Name of Other Party or Attorney: Office of Public Advocates
Address: 1016 West 6th Avenue Suite 100 Anch. AK 99501
Date: 4-23-20 ☒ mailed ☐ hand-delivered

Name of Other Party or Attorney: Elizabeth D. Friedman
Address: 2772 Carolee Court Redding, CA 96002
Date: 4-23-20 ☒ mailed ☐ hand-delivered

Name of Other Party or Attorney: Ann B. Black
Address: 310 K St., Suite 308 Anch. AK 99501
Date: 4-23-20 ☒ mailed ☐ hand-delivered

Patrick H. Lawrence
Signature of Person Filing Motion

Person Filing Motion:

Name: PATRICK HARROLD TORRENCE

Daytime Telephone No. 224-8200

Mailing Address: 3600 BETTE CATO AVENUE, SEWARD ALASKA 99664

FILED

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

APR 22 2020

APPELLATE COURTS
OF THE
STATE OF ALASKA
RECEIVED

PATRICK HARROLD TORRENCE

Applicant, _____ Plaintiff(s),

vs.

STATE OF ALASKA

Respondent. _____ Defendant(s).

Court of Appeals A-13010
Case No. 3AN-11-11446CI
Case No. 3AN-08-3388CR

APR 27 2020

APPELLATE COURTS
OF THE
STATE OF ALASKA

CASE NO. A-13010

CI

**MOTION FOR INEFFECTIVE ASSISTANCE AS
COUNSEL:**

I, PATRICK HARROLD TORRENCE, request that: New counsel be accessed based on previous, and continuous deficient communication.

This request should be granted because *(Include any statutes, court rules, court decisions and any facts that support granting the request)*: The rights to attorney competence derives from the U.S. Constitution Sixth Amendment guaranteeing a criminal defendant effective assistance of counsel. 86 This guarantee applies to state court prosecutions through the Fourteenth Amendment. 87

[Attach extra pages if necessary.]

I certify that all statements in this motion and any attachments are true to the best of my knowledge and belief.

8/31/2018
Date

Patrick H. Torrence
Signature

Notice to Opposing Parties: You have the right to file a response to this motion. Forms and instructions (CIV-808 Packet) are available at courts and at courts.alaska.gov/forms/index.htm. File your response at (court address): 303 K St., Anchorage, AK 99501. You must also mail a copy to the person who filed the motion. Civil Rules 77(c)(2) and 6 set the deadline within which you must respond. For most motions, you must respond within 10 days if the motion was personally served on you or within 13 days (from the date of mailing) if the motion was mailed to you.

CERTIFICATE OF SERVICE

[If the opposing party is represented by an attorney, you must serve the motion on the attorney rather than on the opposing party.]

I certify that I mailed (by first class mail) or hand-delivered a copy of this motion to:

Name of Other Party or Attorney: Office of Public advocacy

Address: 1016 West 6th Ave., Suite 100 Anch. AK 99501

Date: 9/3/2018



mailed



hand-delivered

Name of Other Party or Attorney: Elizabeth D. Friedman

Address: 2772 Carolee Court Redding, CA 96002

Date: 9/3/2018



mailed



hand-delivered

Name of Other Party or Attorney: Ann B. Black

Address: 310 K St., Suite 308 Anch. AK 99501

Date: 9/3/2018



mailed



hand-delivered

Patrick H. Jorance

Signature of Person Filing Motion

FILED

APR 22 2020

APPELLATE COURTS
OF THE
STATE OF ALASKA

Person Filing Proposed Order:

Name: PATRICK HARROLD TORRENCE

Daytime Telephone No. 224-8200

Mailing Address: 3600 BETTE CATO AVENUE SEWARD AK 99664

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA AT ANCHORAGE

PATRICK HARROLD TORRENCE

Applicant, Plaintiff(s),

vs.

STATE OF ALASKA,

Respondent. Defendant(s).

Court of Appeals No. A-13010

Case No. 3AN-11-11446CI t/w

Case No. 3AN-08-3388CR

RECEIVED

APR 27 2020

APPELLATE COURTS
OF THE
STATE OF ALASKA

CASE NO. A-13010

CI

ORDER ON MOTION FOR
INEFFECTIVE ASSISTANCE AS COUNSEL:

It is ordered that:

☐ The motion is granted.

☐ The motion is denied.

☐ A hearing on the motion will be held at _____
(Time and Date) Courtroom _____

Further Orders:

(1) New Counsel

Date

Judge's Signature

Type or Print Judge's Name

I certify that on _____
a copy of this order was mailed to (list
names):

Clerk: _____

1 I received your letter and I am about 99% sure that your petition that
2 you filed in the Appeals Court is deficient on its face and is negligent
3 malpractice as ineffective assistance of counsel; deficient legal standard.

4 1) In 111. Statement of the case A. BACKGROUND. Paragraph one we sometimes
5 live separate, but we were not legally separated.

6 2) In paragraph two she initially lied about where she said she was at, and
7 that she was at her friend Dee's house. See police reports and grand jury.

8 3) In paragraph two she told the grand jury that I was pointing the handgun
9 at the windshield motioning her to move over. This was a lie, and a
10 contradicted statement from what she told the SART nurse. See grand jury
11 transcripts.

12 4) Evidence shows she was only struck in the face. There was no evidence that
13 her hair was pulled out that night; this is also fabricated.

14 5) The facts that I allegedly threatened to kill her, and then she relented
15 and directed me to Lee's apartment complex is fabricated.

16 6) Once inside the daycare, Torrence allegedly forced C.T. to undress and
17 threatened to kill her and commit suicide is fabricated and refuted by her
18 own testimony. See [Tr. 322] The gun was sitting on the floor. "I never
19 said that he told me at gun point to take my clothes off. He didn't force
20 me to take my clothes off at gunpoint".

21 7) C.T. testified that Torrence strangled her and threatened to put the gun in
22 her vagina and pull the trigger. After about three and a half hours,
23 Torrence turned the gun over to C.T. who put it down on the floor. Then
24 the couple had intercourse which was historically the way they reconciled
25 their disputes. All these statements are fabricated and uncorroborated and
26 inconsistent by her own statements. This part is embittered; only the part
about my suicide ideation and later having sexual intercourse is accurate.

8) Paragraph four she didn't initially dial 911. She called me on my cell phone
and ask me to return her laptop. And this was after we checked on the kids
changed diapers, and then I left for my place I was residing that morning.

9) Paragraph five you leave out the grand jury charge of Fourth degree assault
AS 11.41.230 (a)(1) class A misdemeanor.

10) Paragraph six the jury did not find me guilty on all counts. The counts
were renumbered and (1) First degree sexual assault fellatio was dismissed;
(2) Attempted sexual assault was dismissed; (3) Misconduct involving a weapon
in the third degree was dismissed; and (4) Assault in the fourth degree was
dismissed all under rule (43)(a). In a deal outside the presence of the jurors.
And unexplained to them.

1 11) My objection to the prosecutions deal: outside the presence of the jurors,
2 of the merger of the dismissed charges; which showed the multiplicity and
3 the duplicity in this case. And both counsels attempting to coerce my
4 acceptance, was collusion, and Mr. Wolverton despite my objection accepted
5 this malfeasance [Tr. 781-82] "Mr. Torrence: And I did object to it and I
6 still object to it.

7 12) Impeached again my wife about pointing the gun at the windshield: [Tr. 455-
8 58] Well, according to this, this certified transcript, you said, if he
9 showed me the gun, I can't remember if he showed me the gun or he just told
10 me he had it, but I think that he lifted up his shirt and showed it to me.
11 Isn't that what you said? A: yes. Perjury fabricated statements.

12 13) Impeached about the punch in the stomach: [Tr. 506] Q: Okay. And there was
13 no marks on your stomach, were there? A: I don't think so. No.

14 B. APPEAL

15 Correct.

16 C. POST-CONVICTION-PROCEEDINGS. Pg -16- 4.

17 The evidence shows to date that she possessess the key to the gun safe.
18 And it was never found on my person at the time of my arrest or in my property
19 and things. There is video evidence of the purchase for me, at Fred Meyers on
20 Northernlights BLVD. There is an eye-witness Robert Chapman who saw the gun in
21 the Fred Meyers bag in my Expedition SUV the day of the purchase or shortly after
22 because I showed it to him, on the way to get furniture from a whiteman that
23 my wife found in the paper or online.

24 Pg -20-

25 I agree that yim botched the testimony about strangulation. But my wife
26 testified she was not strangled during trial, and GJ Pg 41 L 11: A: I told her
that -- yeah, that he had really not like strangled me like this, but pinched
me right here. This statement refutes the strangulation theory, and medical
evidence.

As I stated to you in my previous letter Kevin Brady's introduction sets
the proper foundation. And gives the reader the proper facts contextually and
theoretically , and characterizes the correctness. Your background does the
opposite. These are simple corrections. Otherwise the petition is incompetent
and unacceptable. If you don't want to make the corrections past the case along
to another attorney. Otherwise you will leave me no choice but to file complaints
including a civil rights complaint under 42 U.S.C. 1983 in the Superior Court
describing these errors that I have carefully and respectfully brought to your
attention.

1 1) I am reliant on my wife's numerous contradictions, and inconsistent
2 statements to show that the prosecution failed to establish my guilt beyond a
3 reasonable doubt on the sexual assault, kidnapping, assault 2, and the assault
4 3. And that Mr. Yim and his co-counsel was clearly ineffective, and that there
5 was clearly an abuse in the process by the prosecution, as well as Mr. Wolverton's
6 abuse of discretion. And these facts were knowingly, and intentionally, and has
7 recklessly caused my inappropriate incarceration. And I understand that you may
8 not be able to raise everything I am talking about, but there are ways in writing
9 that you maybe able to incorporate the truth so the reader can appreciate the
10 truth of the matters asserted:

11 My argument here is that the evidence in conjunction with Mr. Yims co-
12 counsel was ineffective to establish that I recklessly disregarded my wife's
13 lack of consent, an essential element of sexual assault in the first degree.
14 Russell v. State, 934 P.2d 1335, 1340 (Alaska App. 1997), Reynolds v. State,
15 26,664 P.2d 621, 625 (Alaska App. 1983).

16 It was uncontradicted at trial that my wife and I continued to have sex
17 even after contemporaneously living in separate quarters, and my wife and I had
18 sex as recently as one or two days before the so called incident. [Tr. 50]. When
19 my wife spoke with law enforcement, she did not report having been raped, and
20 informed the grand jury that she did not subjectively believe that she had been
21 raped at the time. [Tr. 323-327]. She did not struggle or resist during the
22 sexual encounter with my person. As stated in my petition for review with the
23 Alaska Supreme Court, "the evidence does not support an inference beyond a
24 reasonable doubt that I had a subjective awareness of a substantial risk that
25 my wife did not wish to have intercourse with me, and that I recklessly disregard-
26 ed that risk, an essential element of sexual assault in the first degree.

2) Kidnapping AS 11.41.300(a)(1)(C)

As to the kidnapping charge, the state bore the burden of proving that
I restrained my wife "with the intent to ... inflict physical injury upon or
sexually assault" my wife or place my wife in apprehension of "that any person
would be subjected to serious physical injury or sexually assaulted". AS 11.41.
300(a)(1)(C).

The evidence at trial failed to show that I acted with intent to inflict
physical injury on anyone. The state alleged that I had restrained my wife during
the drive to Celestino Lee's apartment through my display of the firearm, and that
I did so with the intent to inflict physical injury on Mr. Lee and or my wife.
However during my wife's interview with the SART nurse my wife contradicts her
grand jury statement of me pointing the gun at her through the windshield of her
vehicle, and indicated that the firearm had been placed in my waist band of my
pants when I entered the vehicle. Indicating fabrication. [Tr. 317-318, 457].
While the evidence indicated that I intended to confront Mr. Lee, I did not state
any intentions to physically harm Mr. Lee or my wife. Further, when I drove my
wife and I to our daycare business. We did so in order to discuss the problems
in our marriage. After arriving at the daycare, we did not engage in sexual
activity until several hours had passed. [Tr. 318, 324, 326].

1 Testimony at trial showed that while the parties were inside the trialer
2 I had gave my wife the hand gun, confirming that she would have been free to
end the encounter if she so chose.

3 Following the sexual encounter we washed up as usual, and I took my wife
home. As I was leaving for the residence across the street my wife called me
4 on my cell phone and requested that I drop off her lap top to her. [Tr. 330].
My wife then called the police, after I returned with the lap top. The police
5 contacted me several hours later at 10:41 am to awake me from my sleep.

6 Based on this evidence, I am submitting that the evidence at trial was
insufficient to establish that my wife reasonably anticipated that I would
7 inflict physical injury or commit a sexual assaul, an essential element of
kidnapping.

8 3) Assault in the third degree AS 11.41.210(a)(1)

9 The Assault in the second degree charge; choking charge is not corroborated
nor sufficient based on the circumstantial evidence presented in this case. This
10 argument was omitted by counsels, but not by the evidence, and that evidence is
found in the full examination of my wife's person by the SART examiner, and lack
11 of medical treatment. She was not strangled. See GJ Pg. 41 L 11: A: I told her
that -- yeah, that he had not like strangled me like this, but he pinched me
12 right here. This statement refutes the states strangulation theory and fabrication.

13 4) Assault in the third degree AS 11.41.220 (a)(1)(A)

14 The Assault in the third degree fear assault is refuted by the fabricated
inconsistent statements made by my wife, and the exacerbation by the state
15 appointed counsels, that caused the inflammatory excitement in this case. My
wife possessed our gun and was the one responsible for its purchase and the
16 possession of the weapon in which she and the state used as a tool in this
malicious prosecution of my person. These facts are clear from trial testimony
17 and the evidence possessed by my trial attorney's, and my person. She had the
key to the gunsafe, and still does to date. The gun possessed by both of us that
18 night and morning was never placed in that gun cabinet. It was with my person
since purchase 2-9-2008 for my safety. The purchase is captured on video, and
19 Mr. Yim subpoenaed this evidence, and the gun application. But failed to utilized
this evidence appropriately.

20 CONCLUSION:

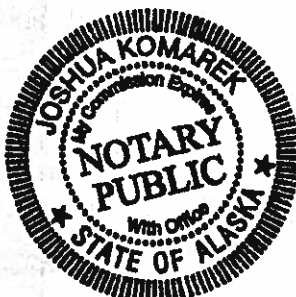
21 If this matter can not be resolved. I am requesting a different
attorney who has my best interest in mind legally. This testimony is sworn by
22 all legal and binding law. Dated this August 31, 2018.

23 Date: 9/2/2018

Affiant: Patrick H. Torrence

Printed: Patrick H. Torrence

24 Subscribed, And Sworn To Me This 2 day of September, 2018
25 At Seward, Alaska, Third Judicial District.



26 NOTARY PUBLIC IN AND FOR ALASKA
My Comm. Exp.: 10/office

PATRICK HARROLD TORRENCE 500702
SPRING CREEK CORRECTIONS
3600 BETTE CATO AVENUE
SEWARD ALASKA 99664

TO: LAW OFFICE OF ELIZABETH D. FRIEDMAN
2773 CAROLEE COURT
REDDING CALIFORNIA 96002

RE: The Opening Brief of the Appellant.

Dear Mrs. Friedman;

With all due respect. Your Opening Brief lacks a proper introduction into this case. I suggest you should have used Mr. Brady's introduction entirely because it gives the reader the proper foundation of the case. And that is the state's allegations along with my wife's statements are fabricated. I am referring to the Copy Original Received January 29, 2016 filed with the Clerk of the Court in the Trial Courts, by Mr. Brady. If you don't have a copy I will send you one.

Your Background sounds like you are the District Attorney; (D.A.) and its interwoven with facts from the Ex-parte Application that was used by Mr. Brady to show the inconsistencies in my wife's testimonies that amounted to perjury by inconsistent statements. Also the Ex-parte was not part of the trial record. Which you do not distinguish.

The Grandjury, Ex-parte application, Trial transcript, and the police and detectives reports all differ and show that she and the state fabricated the evidence, and thus tainting the process. And of course Mr. Yim aided and abetted with his deficient performance that clearly prejudiced my person.

You are plain wrong about the medical reports showings of strangulation this was clearly refuted by Jeff Robinson Yim's Co Counsel. And as the other percipient witness myself there was no strangulation; the mark on the left side of her neck facing me is a hickey because I put it there as a passion mark.

Mr Yim knew that she purchased this gun for me; to set up this fabricated tale but he failed to utilize the video from Fred-Meyers, and the gun application, and the facts from my person to trap her in her lies. When he clearly had this information. She had the keys to the gun safe so how could I come in and take it when she was not home.

Anyway I plan on filing a complaint about the Brief; it is unacceptable in the state that it is in. You can set up a telephonic here at the prison if you would like at (907) 224-8200. This should have been done before you drafted your brief being that I am the only other percipient witness. The states case is entirely hearsay with zero probative value, and that is a definite fact. Please contact me to resolves these issues ASAP. There is evidence also to refute each of the states final (4) four charges. This was a DV case only by clear and more than convincing evidence. See the deal outside the presence of the jurors between counsel Yim and Miovis that I OBJECTED TO.

Dated this August 13, 2018

Patrick H. Torrence
PATRICK HARROLD TORRENCE

1 • Brady's Introduction:

2 This case was completely dependent upon the juror's assessment of the credibility of C.T. While
3 Mr. Torrence does not dispute that a misdemeanor assault took place during the incident, Mr. Torrence
4 disputes that any kidnapping, sexual assault, or felony-level assault took place. Mr. Torrence
5 submits that trial counsel was ineffective for failing to utilize existing court documents, authored
6 by C.T., as a means of effectively cross-examining C.T. for bias, interest, or motive to fabricate.

7 C.T.'s multiple inconsistent versions of what transpired, the parties, marital relationship, and
8 prior sexual interactions post-dating separation were all fertile fodder for cross-examination. More-
9 over, C.T.'s own expressed desire to have sole custody of she and Mr. Torrence's son, M.T., and have
10 exclusive use of the residences and vehicles she and Mr. Torrence acquired during the marriage,
11 provided a powerful motive to fabricate and embellish the events that resulted in Mr. Torrence's
12 convictions for kidnapping and sexual assault, and felony assault.

13 C.T.'s version of events, she being the only percipient witness that testified, should have resulted
14 in cross-examination geared toward ferreting out "motive to fabricate" and "interest" or "bias" in
15 the outcome of the case rather than limited to elicitation of prior inconsistent statements. As shown
16 below, C.T. had a powerful financial incentive in Mr. Torrence's conviction(s) for the most serious
17 class of offenses charged, as that would greatly increase the likelihood of C.T. being awarded sole
18 primary custody of M.T., their son and of C.T. being ultimately awarded all assets from the marital
19 estate.

20 Mr. Torrence submits that trial counsel was ineffective for: (1) failing to adequately investigate
21 and cross-examine C.T. with respect to her motive to fabricate trial testimony and (2) failing to
22 cross-examine C.T. based upon what such an investigation would have revealed.

23 • On page -3-

24 You crop a sentence or two from the Ex-parte but failed to show the inconsistencies.

25 • On page -4-

26 You leave out the fourth degree assault (AS 11.41.230).

• On page -6-

You have the wrong date that the POR was dismissed: the correct date was distributed October 19,
2017, entered by judge Wolverton.

• On page -14-

Pointing the gun at the windshield, and then stating that I brandished the gun is a contradiction-
fabrication.

• On page -20-

The mark on her neck on the left side facing me is a hickey, I placed the passion mark there by
sucking on her neck. She was not strangled and there was no medical evidence of strangulation.
As a matter of fact: GJ Pg 41 L11 on the Assault 2 choking; A I told her that -- yeah he had not
like strangled me like this, he punched me right here. And if you push really hard on -- it
hurts, and you -- and it stops your breath a little bit, but not like enough to strangle --
strangle you and -- like kill you. GJ Pg 42 L2 choking:
A it -- like, it hurt, so it was like -- kind of like I was trying to catch my breath,
but not like I couldn't breath at all. Although she is embellishing here she clearly states she
was not strangled.

Elizabeth D. Friedman
ATTORNEY AT LAW
Alaska Bar Number 9306027
(907) 240-4507
2773 Carolee Court
Redding, CA 96002

June 15, 2018

Patrick H. Torrence
Seward Correctional
3600 Bette Cato Avenue
Seward, AK 99664

Re: Appeal Brief in PCR Case

Dear Mr. Torrence:

I received your letter, and I understand that you wish to have post-conviction arguments other than those raised in Kevin Brady's amended petition or in Marcy McDannel's opposition to dismiss.

Unfortunately, as I explained briefly in my earlier letter, I am limited in what I can do in an appeal of the dismissal of a PCR petition. We have to take Judge Wolverton's order dismissing the PCR as the basis for the appeal and show that his facts and/or legal conclusions were incorrect.

I am limited to arguing that the judge made a mistake in dismissing your PCR application. I can't raise new issues like prosecutorial misconduct or other matters because these weren't raised in Brady's petition and weren't part of the judge's order.

What I was able to do based on the record is to go through Mr. Yim's cross examination of your wife and show how every question he asked worked to your disadvantage. My argument is straight forward: his tactics of trying to find minor little inconsistencies in her testimony was incompetent and backfired. And, that his failure to cross examine her on her financial motive was also incompetent.

I will send you a copy of the brief as soon as it is accepted by the Court and printed which should be in about 3 to 4 weeks.

Best regards,



Elizabeth D. Friedman

Elizabeth D. Friedman
ATTORNEY AT LAW
Alaska Bar Number 9306027
(907) 240-4507
2773 Carolee Court
Redding, CA 96002

June 29, 2018

Patrick H. Torrence
Seward Correctional
3600 Bette Cato Avenue
Seward, AK 99664

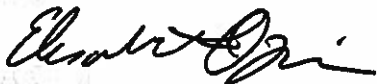
Re: Appeal Brief in PCR Case

Dear Mr. Torrence:

I wanted to let you know that I filed your opening brief on June 28th. As I mentioned in my previous letter, the Court will review the brief and once it is accepted it will be sent back for printing.

As soon as I have the printed version, I will send you a copy. Thank you for your patience.

Best regards,



Elizabeth D. Friedman

Elizabeth D. Friedman
ATTORNEY AT LAW
Alaska Bar Number 9306027
(907) 240-4507
2773 Carolee Court
Redding, CA 96002

July 21, 2018

Patrick H. Torrence
Seward Correctional
3600 Bette Cato Avenue
Seward, AK 99664

Re: Appeal Brief in PCR Case

Dear Mr. Torrence:

I wanted to let you know that your opening brief was accepted by the Court. I am having it printed, and you should have copies in about two weeks.

The state has requested the maximum extension of time to respond to the brief. Their extension is allowed by the Court rules. So, unfortunately, they have until **February 16, 2019** (actually February 18 because the 16th is a Saturday) to file their opposition.

Although I would like to have the state's response sooner, there is nothing that I can do to hurry them along.

I will get you a copy of your opening brief as soon as I receive it from the printer.

Best regards,



Elizabeth D. Friedman

enc. SOA Motion

Elizabeth D. Friedman
ATTORNEY AT LAW
Alaska Bar Number 9306027
(907) 240-4507
2773 Carolee Court
Redding, CA 96002

August 23, 2018

Patrick H. Torrence
Seward Correctional
3600 Bette Cato Avenue
Seward, AK 99664

Re: Response to your letter re PCR Case

Dear Mr. Torrence:

I received your letter received your letter regarding the opening brief and the motion you submitted to the court.

Please review my June 15, 2018 letter in which I explained that a PCR appeal is limited to arguing the issues raised in the PCR proceedings. In your case, the appeal is limited to arguing that Judge Wolverton was incorrect in dismissing the PCR. The substance of the appeal is limited to the issues raised in Kevin Brady's amended petition and in Marcy McDannel's opposition to dismiss.

The trial and the appeal established the "facts" in the case: unless there is new evidence which was not possible to have been raised at trial, for example, a previously unknown witness or a new scientific discovery, a PCR does not contest the evidence. In your case, the PCR focused on the attorney performance and trial strategy, and the appeal is limited to these issues.

Sincerely,



Elizabeth D. Friedman

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Person Filing Motion:

Name: PATRICK HARROLD TORRENCE

Daytime Telephone No. 221-8265

Mailing Address: 3600 BETTE CATO AVENUE SEWARD ALASKA 99664

8/21/2018

REFUSED FOR FILING

MR. Torrence -

Please inform your attorney of the issues you have if the brief filed on your behalf.

W. Huntman
Chief Deputy Clerk
cc: Friedman Black

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

PATRICK HARROLD TORRENCE

Applicant Plaintiff(s),

vs.

STATE OF ALASKA,

Respondent. Defendant(s).

Court of appeals No. A-13010
Case No. 3AN-11-1146CI L/W
Case No. 3AN-08-3388CR

AUG 1 2018

CASE NO. A-13010

APPELLATE COURTS
OF THE STATE OF ALASKA

MOTION FOR EXPOSURE OF MISTAKE OF FACTS:

I, PATRICK HARROLD TORRENCE, request that: an evidentiary hearing be held on the facts of mistake of facts: the OPENING BRIEF OF THE APPELLANT. (1) The factual misstatements bolsters the state case; implied legal separation, omission of the gun being pointed at the windshield, contradicted assault information; she was only backhanded for lying in the SUV, there was no evidence of strangulation; those are hickies on her neck.

This request should be granted because *(Include any statutes, court rules, court decisions and any facts that support granting the request):* The rights to attorney competence derives from the U.S. Constitution Sixth Amendment guaranteeing a criminal defendant effective assistance of counsel. 86 This guarantee applies to state court prosecutions through the Fourteenth Amendment. 87

[Attach extra pages if necessary.]

I certify that all statements in this motion and any attachments are true to the best of my knowledge and belief.

8/14/2018

Date

Patrick H. Torrence

Signature

Notice to Opposing Parties: You have the right to file a response to this motion. Forms and instructions (CIV-808 Packet) are available at courts and at courts.alaska.gov/forms/index.htm. File your response at (court address): 303 K St., Anchorage AK 99501. You must also mail a copy to the person who filed the motion. Civil Rules 77(c)(2) and 6 set the deadline within which you must respond. For most motions, you must respond within 10 days if the motion was personally served on you or within 13 days (from the date of mailing) if the motion was mailed to you.

CERTIFICATE OF SERVICE

[If the opposing party is represented by an attorney, you must serve the motion on the attorney rather than on the opposing party.]

I certify that I mailed (by first class mail) or hand-delivered a copy of this motion to:

Name of Other Party or Attorney: Elizabeth D. Friedman

Address: 2772 Carolee Court Redding, CA 96002

Date: 8/14/2018

☒ mailed ☐ hand-delivered

Name of Other Party or Attorney: Ann B. Black

Address: 310 K St., Suite 308 Anchorage AK 99501

Date: 8/14/2018

☒ mailed ☐ hand-delivered

Name of Other Party or Attorney: _____

Address: _____

Date: _____

☐ mailed ☐ hand-delivered

Patrick H. Torrence
Signature of Person Filing Motion

FILED

AUG 15 2018

APPELLATE COURTS
OF THE
STATE OF ALASKA

RECEIVED

AUG 1 2018

APPELLATE COURTS
OF THE
STATE OF ALASKA

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Person Filing Proposed Order:

Name: PATRICK HARROLD TORRENCE

Daytime Telephone No. 224-8200

Mailing Address: SPRING CREEK CORRECTIONS 3600 BETTE CATO AVENUE

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA AT ANCHORAGE
IN THE MATTERS OF APPEAL:

PATRICK HARROLD TORRENCE

Applicant,

Plaintiff(s),

vs.

STATE OF ALASKA,

Respondent.

Defendant(s).

) Court of Appeals No. A-13010
) Case No. 3AN-11-11446CI t/w
) Case No. 3AN-08-3388CR

CASE NO. A-130010

CI

ORDER ON MOTION FOR
EXPOSURE OF MISTAKE OF FACTS:

It is ordered that:

☐ The motion is granted.

☐ The motion is denied.

☐ A hearing on the motion will be held at _____
(Time and Date) Courtroom _____

Further Orders:

(1) The factual assertion in the Statement of the case A. Background are interwoven with the fabricated evidence from the Ex-parte as truth when it was introduced to Kevin G. Brady to show the fabrication of my wife's statement. Trial evidence refutes these statements, and shows the inconsistent statements amounting to perjury. My current counsel sounds like the prosecution. She is also inaccurate about the strangulation evidence. It is not corroborated. The fact that none of these charges are corroborated is an omission of the facts. This includes the medical evidence. However she is right about the ineffective assistance of counsel, and the abuse of discretion. The brief as is, is unacceptable because the fabrication bolsters the allegations which are not corroborated and has no probative value; of the states evidence.

Date

Judge's Signature

Type or Print Judge's Name

I certify that on _____
a copy of this order was mailed to (list
names):

Clerk: _____

In the Court of Appeals of the State of Alaska

Patrick Harrold Torrence,

Appellant,

V.

State of Alaska,

Appellee.

Court of Appeals No. A-13010

Order

Date of Order: 9/13/18

Trial Court Case # 3AN-11-11446CI

The Appellant, Patrick Harrold Torrence, acting *pro se*, has filed a motion to discharge his court-appointed attorney, and to have a different attorney appointed to represent him in this appeal. Neither Mr. Torrence's attorney nor the State has filed a response.

This appeal arises from the summary disposition of Mr. Torrence's application for post conviction relief. Mr. Torrence's court-appointed attorney — Ms. Elizabeth D. Friedman — has already filed the opening brief. In his pleading, Mr. Torrence disagrees with the issue Ms. Friedman raised on appeal, and asserts that based on her choice of the issue to raise in this appeal, Ms. Friedman has provided ineffective assistance.

Because Mr. Torrence is represented at public expense (by contract through the Office of Public Advocacy), his dissatisfaction with Ms. Friedman, the attorney assigned to his case, does not constitute good cause to discharge the attorney. Mr. Torrence does not have the right to choose the particular attorney to represent him.

Torrence v. State - p. 2
File No. A-13010
9/13/18

Coleman v. State, 621 P.2d 869, 878 (Alaska 1980); *Annas v. State*, 726 P.2d 552, 557 (Alaska App. 1986).

It is Ms. Friedman's duty, in the exercise of her best professional judgment, to decide how to brief the appeal. *See Jones v. Barnes*, 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983). As the United States Supreme Court said in *Jones v. Barnes*,

Experienced advocates since time beyond memory have emphasized the importance of winnowing out weaker arguments on appeal and focusing on one central issue if possible, or at most on a few key issues. Justice Jackson, after observing appellate advocates for many years, stated:

... Legal contentions, like currency, depreciate through over-issue. The mind of an appellate judge is habitually receptive to the suggestion that a lower court committed an error. But receptiveness declines as the number of assigned errors increases. ... Experience on the bench convinces me that multiplying assignments of error will dilute and weaken a good cause and will not save a bad one. Jackson, "Advocacy Before the United States Supreme Court", 25 Temple L.Q. 115, 119 (1951).

Jones v Barnes, 463 U.S. at 751-752, 103 S.Ct. at 3313.


Thus, it is the attorney's role to assess the potential points on appeal and then choose and argue the best ones. The fact that Mr. Torrence may disagree with his attorney's choices does not mean that his attorney has provided ineffective assistance of counsel.

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File No. A-13010
9/13/18

For these reasons, Mr. Torrence's motion to discharge his court-appointed attorney and to have a different attorney appointed is DENIED.

Entered under the authority of Chief Judge Mannheimer.

Clerk of the Appellate Courts



Ryan Montgomery-Sythe, Deputy Clerk

cc: Patrick Harrold Torrence (at Spring Creek Correctional Center)

Distribution:

Elizabeth D Friedman - OPA Contract
Law Office of Elizabeth D. Friedman
2773 Carolee Court
Redding CA 96002

Ann B Black
Office of Criminal Appeals
1031 W. 4th Ave, Suite 200
Anchorage AK 99501

NOTICE

This is a summary disposition issued under Alaska Appellate Rule 214(a). Summary dispositions of this Court do not create legal precedent and are not available in a publicly accessible electronic database. See Alaska Appellate Rule 214(d).

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

PATRICK H. TORRENCE,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-13010
Trial Court No. 3AN-11-11446 CI

SUMMARY DISPOSITION

No. 0111 — March 4, 2020

Appeal from the Superior Court, Third Judicial District,
Anchorage, Michael L. Wolverton, Judge.

Appearances: Elizabeth D. Friedman, Law Office of Elizabeth
D. Friedman, Redding, California, under contract with the
Office of Public Advocacy, Anchorage, for the Appellant. Ann
B. Black, Assistant Attorney General, Office of Criminal
Appeals, Anchorage, and Kevin G. Clarkson, Attorney General,
Juneau, for the Appellee.

Before: Allard, Chief Judge, Harbison, Judge, and Coats, Senior
Judge.*

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* Sitting by assignment made pursuant to Article IV, Section 11 of the Alaska
Constitution and Administrative Rule 23(a).

Patrick H. Torrence was convicted by a jury of kidnapping, first-degree sexual assault, and second- and third-degree assault.¹ This Court affirmed Torrence's convictions on direct appeal.² Torrence then filed an application for post-conviction relief, alleging ineffective assistance of counsel by his trial attorney. The application was dismissed by the superior court for failure to state a *prima facie* claim for relief, and Torrence now appeals the dismissal of his application.

The victim in the case was Torrence's wife, who, prior to trial, obtained domestic violence protective orders and a favorable divorce and custody judgment. During the criminal trial, Torrence's defense attorney did not cross-examine the victim about these domestic relations cases, and instead focused on what Torrence considered to be minor inconsistencies in the victim's testimony.

Torrence's application for post-conviction relief alleged that the victim had a motive to lie about Torrence's conduct in order to obtain the domestic violence protective orders, sole custody of their child, and a lucrative divorce settlement. The application alleged that Torrence's attorney failed to adequately investigate and cross-examine the victim with respect to her bias, interest, and motive to fabricate testimony. According to Torrence, no competent attorney would have decided not to use information from the domestic relations cases to cross-examine the victim about her "desire to financially capitalize on Mr. Torrence's incarceration."

In response, Torrence's trial attorney submitted an affidavit, which explained why he pursued his particular strategy. The attorney admitted the court documents were relevant but stated that cross-examining the victim about the protective

¹ AS 11.41.300(a)(1)(C), AS 11.41.410(a)(1), AS 11.41.210(a)(1), and AS 11.41.220(a)(1)(A), respectively.

² *Torrence v. State*, 2013 WL 1283396 (Alaska App. Mar. 27, 2013) (unpublished).

orders and divorce could cause the jury to dislike Torrence and undermine his defense. The attorney stated that he had spoken to Torrence's potential divorce attorney and determined that, given the unique facts of the case, focusing on those issues would have made no appreciable difference — and, if anything, could have been harmful. Counsel added that, during trial, the victim did not testify to additional acts of sexual assault that had originally been charged, and that a deal was made dismissing those counts, which also affected his strategy in cross-examining the victim.

The superior court dismissed Torrence's post-conviction relief application for failure to state a *prima facie* case. In its written order, the superior court stated that Torrence had not provided specific evidence to overcome the presumption that trial counsel's tactical decisions were competent.

To present a *prima facie* case of ineffective assistance of counsel under *Risher v. State*, a defendant must allege facts that, if proven true, show (1) that the attorney's performance fell below the standard of the minimal competence expected of an attorney experienced in criminal law; and (2) that, but for the attorney's incompetent performance, there is a reasonable possibility that the outcome of the proceeding would have been different.³

Whether an application for post-conviction relief sets forth a *prima facie* case for relief is a question of law that we review *de novo*.⁴ We have reviewed Torrence's pleadings in this case, and we agree with the superior court's finding that Torrence's application failed to allege facts that, if true, would establish that his counsel was incompetent. This Court has repeatedly noted that if "it appears that counsel's actions were undertaken for tactical or strategic reasons, they will be virtually immune

³ *Risher v. State*, 523 P.2d 421, 424-25 (Alaska 1974).

⁴ *See Burton v. State*, 180 P.3d 964, 974 (Alaska App. 2008).

from subsequent challenge, even if, in hindsight, the tactic or strategy appears to have been mistaken or unproductive.”⁵ Although his attorney’s tactical decision to cross-examine the victim by impeaching her with inconsistencies in her statements may have been unproductive, Torrence’s application failed to show that the decision fell below the standard of minimal competence expected of an attorney experienced in criminal law.

We therefore AFFIRM the judgment of the superior court.

⁵ See, e.g., *Lott v. State*, 836 P.2d 371, 376 (Alaska App. 1992) (quoting *State v. Jones*, 759 P.2d 558, 569 (Alaska App. 1988)).